delivers them at once to the vendee. The historical fact adverted to by Mr. Justice Gray in Emert v. Missouri[10] that hawkers and peddlers have always been regarded with suspicion and subjected to regulation, might well serve as a distinction where the license is imposed merely as a police regulation, but not where the license is imposed for revenue. Unless such taxes as that under consideration in the Robbins case, supra, can be said to work a discrimination against the products of other States in fact, though non-discriminatory in their terms, it would seem that whatever burden they place upon interstate commerce is merely incidental, and no more "regulatory" thereof than any other tax.

S. R. S.

CONSTITUTIONAL LAW: UNIVERSITY OF CALIFORNIA: VACCINATION OF STUDENTS.—A decision by the District Court of Appeal, First District,[1] has a double interest, (1) in discussing the powers of the Regents of the University of California, and (2) in construing the state vaccination law of 1911.[2]

(1) The University of California owes its legal existence to an enactment known as the Organic Act, or Charter, of the University, of the date of March 23, 1868.[3] By the provisions of this act the institution was placed under the charge and control of a board of directors styled the Regents of the University of California. To this body was intrusted the general management and superintendence of the institution, with the power to prescribe rules for its government and to fix the qualifications for the admission of students thereto. The Organic Act was amended in 1872 in an unimportant point,[4] and was in large part incorporated into the Political Code in the same year.[5] By the Constitution of 1879 the institution was raised to the dignity of a constitutional department or function of the State government, by the following words: "The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same passed March 23, 1868 (and the several acts amendatory thereof), subject only to such legislative control as may be necessary to ensure compliance with the terms of its endowments and the proper investment and security of its funds."[6]

In 1878 the Hasting College of the Law was established, with a separate board of directors, as an affiliated college of the Uni-

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[10] (1895) 156 U. S. 296.
[1] Williams v. Wheeler, (Dec. 31, 1913) 18 Cal. App. Dec. 51.
[2] Stats. 1911, p. 295.
[3] Stats. 1867-68, p. 248.
[4] Stats. 1871-72, p. 655.
[5] Pol. Code, secs. 1385-1477.
[6] Cal. Const. art. IX, sec. 9.

versity.[7] In 1883[8] and in 1885[9] the legislature attempted to amend the act of 1878 by transferring the government of Hastings College of the Law to the Regents of the University. But the Supreme Court held that the Hastings College having been affiliated with the University prior to 1879 had, by the Constitution of that year, become a part of the University, and that it was no longer competent for the legislature to change the form of the government of the University or of any college thereof then existing.[10] In another case it was held that section 343 of the Political Code, which designated the Regents as civil executive officers, was in effect abrogated by the constitutional provision.[11]

Our principal case now holds that the Regents are invested with a larger degree of independence and discretion in respect to the details of the internal government of the University, beyond legislative interference or control, than is generally held to exist in inferior boards and commissions. The investment of the authorities of the University with this amplitude of power and discretion in the management of its affairs must be held to include the power to make reasonable rules relating to the health of its students, and especially to make and enforce such reasonable regulations as will tend to prevent the introduction and spread of contagious disorders among the student body. Such regulations are only subject to the paramount authority of the legislature to make general police and health laws. Hence, it is held, that, in the absence of any express legislative enactment of a valid general law requiring vaccination as a condition of admission to a public educational institution, the Regents are fully authorized to make and enforce a reasonable rule upon that subject.

(2) The court holds that the rule which the Regents had adopted requiring that every student should produce satisfactory evidence of having been successfully vaccinated within seven years, or else should be vaccinated, as a condition of attending the University, is a reasonable regulation and within the power of the Regents, and is not inconsistent with any existing valid state health law. In reaching this conclusion, the court has to hold the state vaccination law[12] invalid, at least in part. Vaccination laws requiring all school children to be vaccinated have been upheld several times in California.[13] The vice of the law of 1911 is in this, that after providing compulsory vaccination for

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[7] Stats. 1877-78, p. 533.
[8] Stats. 1883, p. 26.
[9] Stats. 1885, p. 203.
[10] People v. Kewen, (1886) 69 Cal. 215, 10 Pac. 393.
[11] Lundy v. Delmas, (1894) 104 Cal. 655; 38 Pac. 445.
[12] Stats. 1911, p. 295.
[13] Abeel v. Clark, (1890) 84 Cal. 226, 24 Pac. 383; French v. Davidson, (1904) 143 Cal. 658, 77 Pac. 663; State Board of Health v. Board of Trustees, (1910) 13 Cal. App. 514, 110 Pac. 137.

attendance at an educational institution, it proceeds to exempt from its operation such persons as are "conscientiously opposed to the practice of vaccination and will not consent to being vaccinated." The court very properly holds such a provision inconsistent with the rest of the act, as being no part of a law designed to promote the health of the people, and therefore unconstitutional. Whether the whole vaccination law of 1911 is thereby invalidated, the court does not find it necessary to consider.

W. C. J.

CONSTITUTIONAL LAW: UNREASONABLE SEARCH: PRODUCTION OF DOCUMENTS.—The California Court shows no tendency to make it easier to procure an inspection of an opponent's documents.[1] The attempts have often failed for a number of reasons—(1) want of affidavit of materiality; (2) inexact identification of document required; (3) omnibus order for all documents, papers, etc.; (4) "fishing excursion"; (5) violation of the constitutional right against unreasonable search.[2]

The disappointed seeker can console himself that it was no easier under the former English system, which was based on the theory that evidence should be concealed until trial; even in equity, discovery was hindered by intricate limitations.[3] In California, section 1000 of the Code of Civil Procedure gives a right to inspect documents relating to the merits of the action, while the deposition of a party can always be taken and the witness ordered to produce documents on the hearing thereof.[4] These sections probably obviate the necessity of a bill of discovery and enlarge its scope.[5] Inherited tradition and the intense individualism surviving from the nineteenth century, however, continue the obstacles in the way of obtaining evidence from an opponent before trial. Even in England where the rules of court are very liberal, the practice both for interrogatories

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[1] Funkenstein et al. v. Superior Court, (Jan. 7, 1914) 18 Cal. App. Dec. 87.

[2] Ex parte Clarke, (1899) 126 Cal. 235, 58 Pac. 546; 77 Am. St. Rep. 176; 46 L. R. A. 835. Hibernia S. & L. Soc. v. Kaufman, (1903) 140 Cal. 69; 73 Pac. 750; Madera Ry. Co v. Raymond Granite Co., (1906) 3 Cal. App. 668; 87 Pac. 27; Union Collection Co. v. Superior Court, (1906) 149 Cal. 790; 87 Pac. 1035; Kullman, Salz & Co. v. Superior Court, (1911) 15 Cal. App. 276, 114 Pac. 589; San Fernando Copper Mining & Reduction Co. v. Humphrey, (1901) 111 Fed. 772. The Federal practice is narrower than the State. Carpenter v. Winn, (1910) 221 U. S. 533.

[3] Wigmore on Evidence, Chap. LXII.

[4] Ex parte Clarke, supra.

[5] Wright v Superior Court, (1903) 139 Cal. 469; 73 Pac. 145; Union Collection Co. v. Superior Court, (1906) 149 Cal. 790; 87 Pac. 1035.